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NOV 02 2016
CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY DEPUTY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SKY TOXICOLOGY, LTD., SKY TOXICOLOGY LAB MANAGEMENT, LLC, FRONTIER TOXICOLOGY, LTD., FT LAB MANAGEMENT, LLC, HILL COUNTRY TOXICOLOGY, LTD., ECLIPSE TOXICOLOGY, LTD., ECLIPSE LAB MANAGEMENT, LLC, AXIS DIAGNOSTICS, INC.,	§	SA16CA1094 FB
PLAINTIFFS	§	**CIVIL ACTION NO.__________**
vs.	§	**JURY DEMANDED**
UNITEDHEALTHCARE INSURANCE COMPANY, UNITEDHEALTCARE OF TEXAS, INC., UNITEDHEALTHCARE OF FLORIDA, INC., AND UNITEDHEALTHCARE SERVICES, INC.,	§	
DEFENDANTS	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Sky Toxicology, Ltd., Frontier Toxicology Ltd., Hill Country Toxicology, Ltd., Eclipse Toxicology, Ltd., Axis Diagnostics, Inc. (collectively, "Lab Plaintiffs"), Sky Toxicology Lab Management, LLC, FT Lab Management, LLC, Eclipse Lab Management, LLC (collectively, "General Partner Plaintiffs") (and all Plaintiffs collectively "Plaintiffs") file this Complaint against Defendants UnitedHealthcare Insurance Company, UnitedHealthcare of Florida, Inc., UnitedHealtchare of Texas, Inc., and UnitedHealthcare Services, Inc. (collectively, "United" or "Defendants"), and respectfully show the Court as follows:

I. PARTIES

Plaintiffs

1. Lab Plaintiffs are entities that perform or performed clinical diagnostic toxicology urinalysis ("UA") testing. General Partner Plaintiffs are limited liability corporations that are the general partners of certain of the respective Lab Plaintiffs.

The Lab Plaintiffs

2. Plaintiff Sky Toxicology, Ltd. is a limited partnership organized under the laws of the State of Florida whose principal place of business is 1077 Central Parkway South, Suite 200, San Antonio, Texas 78232.

3. Plaintiff Frontier Toxicology, Ltd. is a limited partnership organized under the laws of the State of Texas whose principal place of business is 1077 Central Parkway South, Suite 200, San Antonio, Texas 78232.

4. Plaintiff Hill Country Toxicology, Ltd. is a limited partnership organized under the laws of the State of Texas whose principal place of business is 1077 Central Parkway South, Suite 200, San Antonio, Texas 78232.

5. Plaintiff Axis Diagnostics, Inc. is Pennsylvania corporation, whose principal place of business is 1077 Central Parkway South, Suite 200, San Antonio, Texas 78232.

6. Plaintiff Eclipse Toxicology, Ltd. is a limited partnership organized under the laws of the State of Texas, whose principal place of business is 1077 Central Parkway South, Suite 300, San

Antonio, Texas 78232.

7. Eclipse Toxicology, Ltd. was established in 2015.

The General Partners

8. Each Lab Plaintiff, except for Axis Diagnostics, Inc., has a separate limited liability company serve as its respective general partner.

9. Plaintiff Sky Toxicology Lab Management, LLC, is a limited liability company organized under the laws of the State of Florida whose principal place of business is 1077 Central Parkway South, Suite 200, San Antonio, Texas 78232.

10. Plaintiff FT Lab Management, LLC is a limited liability corporation organized under the laws of the State of Florida whose principal place of business is 1077 Central Parkway South, Suite 200, San Antonio, Texas 78232.

11. Plaintiff Eclipse Lab Management, LLC is a limited liability corporation organized under the laws of the State of Texas whose principal place of business is 1077 Central Parkway South, Suite 300, San Antonio, Texas 78232.

Defendants

12. As United asserted in its previous case against Plaintiffs, Defendant UnitedHealthcare Insurance Company, Inc. is a corporation organized under the laws of the State of Connecticut, with its principal place of business in the State of Connecticut. It operates as a foreign for-profit corporation in Texas. It can be served via its agent for process at CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136 USA. UnitedHealthcare Insurance Company, Inc.

fully-insures and administers health plans.[1]

13. Defendant UnitedHealthcare of Texas, Inc. is a corporation organized under the laws of the State of Texas , with its principal place of business in the State of Texas . It can be served via its agent for process at CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136 USA. UnitedHealthcare of Texas, Inc. fully-insures and administers plans.

14. As United asserted in its previous case against Plaintiffs, Defendant UnitedHealthcare of Florida, Inc. is a corporation organized under the laws of the State of Florida, with its principal place of business in the State of Florida. It can be served via its agent for process CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324. UnitedHealthcare of Florida, Inc. fully-insures and administers plans.

15. As United asserted in its previous case against Plaintiffs, Defendant UnitedHealthcare Services, Inc. is a corporation organized under the laws of the State of Minnesota, with its principal place of business in the State of Minnesota. It is a foreign for-profit corporation operating in Texas. It can be served via its agent for process at CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136 USA. UnitedHealthcare Services, Inc. administers plans that are funded by plan sponsors.

II. JURISDICTION AND VENUE

16. This Court has personal jurisdiction over all Defendants in this action, and personal jurisdiction is proper before this Court pursuant to Texas statutes and because Defendants operate, conduct, engage in and carry on business in Texas, have committed, and/or have

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[1] United previously filed a Complaint against Plaintiffs in the Southern District of Florida, which was dismissed on November 1, 2016. UnitedHealthcare Insurance Company, et al. v. Sky Toxicology, Ltd., et al., Case No. 9:16-CV-80649-ROSENBERG/HOPKINS. Many of the assertions about United in this Complaint include phrases directly taken from that Complaint.

conspired to commit, and/or have participated in a conspiracy that has committed tortious acts within the state of Texas, targeted towards Texas residents, businesses, or interests. Personal jurisdiction is also proper before this Court pursuant to Texas statutes because Defendants engage in substantial and not isolated activities within Texas.

17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the Constitution, laws, or treaties of the United States. Specifically, Plaintiffs assert claims in this case that arise under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et. seq., as Plaintiffs acted as an ERISA beneficiary by virtue of the assignment of benefits from the individual insureds who had contracts with United, Plaintiffs stands as a beneficiary under United plans and seeks payment of claims owed under employee health and welfare benefit plans that fall within the scope of ERISA and, second, Plaintiffs also request declaratory judgment regarding any alleged fraud, tortious interference, or other claims discussed below related to these same health and welfare benefit plans for which United is an ERISA fiduciary, which, by necessity, involves the interpretation of ERISA-governed health and welfare benefits.

a. Plaintiffs, as assignee of Defendants' insureds, has exhausted all of its administrative remedies and/or, in the alternative, has been prevented from meaningful access to Defendants' administrative remedy processes and must seek redress from this Court for Defendants' violations of state and federal law, including but not limited to ERISA.

b. The remedies Plaintiffs seek under the terms of ERISA and under the plans at issue are for the benefits due them pursuant to 29 U.S.C. § 1132(a)(1)(B), an award of prejudgment interest on their claims to the date of payment pursuant to governing law, and for an award of attorney fees and costs pursuant to 29 U.S.C. § 1132(g).

18. This Court has jurisdiction over United's remaining claims pursuant to 28 U.S.C. § 1367 because the state and common law claims alleged herein are so related to the federal claims that they form part of the same case or controversy.

19. Venue is proper in the Western District of Texas pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims in this action occurred in the Western District of Texas and many of the parties are domiciled or perform substantial acts connected to the Complaint in Texas. Specifically, many of United's health plans and members can be found within this district, many of the Plaintiffs and some of the Defendants are located in this district, and people or businesses related to the case have facilities in in this district.

III. FACTUAL BACKGROUND

20. As United asserted in its previous case against Plaintiffs, United is a health services company that provides health and welfare benefit plans to millions of individuals.

21. As United asserted in its previous case against Plaintiffs, individuals who are part of United's plans are known as "members."

22. As United asserted in its previous case against Plaintiffs, United provides its members with healthcare coverage from medical professionals.

23. As United asserted in its previous case against Plaintiffs, United is the claims administrator for all of these plans for which Plaintiffs seek relief and, as the authorized claims-review fiduciary of each of the plans at issue, exercises discretionary authority over plan assets and plan administration, including whether to issue reimbursements in response to claims submitted by healthcare providers, such as Lab Plaintiffs.

24. As United asserted in its previous case against Plaintiffs, the majority of United's plans for which Plaintiffs seek relief are governed by ERISA, in that they are non-governmental employee health and welfare benefit plans maintained by employers for the benefit of their employees and do not fall within any ERISA safe-harbor provision.

25. As United asserted in its previous case against Plaintiffs, with respect to the ERISA plans at issue, United exercised its discretion as an ERISA fiduciary and has administered claims denials on behalf of such plans associated with the beneficiaries' claims.

26. As United asserted in its previous case against Plaintiffs, United exercises its discretion as a claims administrator of each of the plans associated with the claims at subject in this matter.

27. The types of plans with claims for which Lab Plaintiffs seek relief are (i) administrative services only ("ASO") plans and (ii) fully-funded plans.

ASO Plans.

28. ASO plans are funded by their respective sponsor, generally an employer, and the employer-sponsor's employees' contributions.

29. As United asserted in its previous case against Plaintiffs, United provides administrative services for its ASO plans, pursuant to Administrative Services Agreements it has with the ASO-plan sponsors. The Administrative Services Agreements assign to United the authority, responsibility, discretion, and obligation to determine eligibility for coverage, make factual determinations, make coverage determinations, conduct reviews of denied claims, process and make payment on claims submitted by healthcare providers, and adjudicate plan members' appeals relating to adverse benefits decisions.

30. As United asserted in its previous case against Plaintiffs, one of United's administrative responsibilities under the Administrative Services Agreements is the monitoring and pursuit of

overpayments and fraud that involve the plans' funds, including taking legal action on behalf of the ASO plans to recover such funds. The relevant Administrative Services Agreements state: "You delegate to [United] the discretion and authority to use such procedures and standards, including the authority to undertake actions, including legal actions, which have the largest impact for the largest number of customers."

Fully-Insured Plans.

31. As United asserted in its previous case against Plaintiffs, United's fully-insured plans are funded by United and, like its role with ASO plans, United is also the administrator of these fully-funded plans.

Plan Documents and Terms.

32. As United asserted in its previous case against Plaintiffs, all of United's plans function in accordance with plan documents, which establish, among other things, the rights and responsibilities of the plan.

33. As United asserted in its previous case against Plaintiffs, United's plans allow members to choose to obtain healthcare services from either network providers or non-network providers.

34. As United asserted in its previous case against Plaintiffs, Network providers are providers with whom United has entered into an agreement pursuant to which United has agreed to reimburse providers at specified rates for medical services provided to United's members. In turn, network providers agree to provide services to United's members, accept reimbursement at specified rates, and not bill United's members for any other amounts, except under limited circumstances.

35. As United asserted in its previous case against Plaintiffs, non-network providers, such as Lab Plaintiffs, have not entered into a provider agreement with United. United has not agreed to

pay non-network providers any predetermined amounts for services provided to United's members.

36. Non-network providers charge and bill United and plan members at rates set by the provider.

37. As United asserted in its previous case against Plaintiffs, Lab Plaintiffs are all non-network providers and thus all claims submitted by Lab Defendants to United are for non-network services.

Urinalysis Testing.

38. As United asserted in its previous case against Plaintiffs, UA tests are commonplace in modern medicine and are utilized as important tools to, among other things, prevent drug abuse, prevent the illegal sale of prescription drugs, and prevent potentially harmful drug interactions.

39. As United asserted in its previous case against Plaintiffs, confirmation testing utilizes more reliable technology than POCT and provides a more technically sound qualitative result or, where appropriate, a quantitative analysis, which shows not only whether a drug is in a urine specimen, but also how much of that drug is present.

40. As United asserted in its previous case against Plaintiffs, confirmation testing can include tests for a variety of substances, generally grouped together in "panels." For example, one panel may include tests for opiates, barbituates, and marijuana, while another may test for marijuana, amphetamines, and designer drugs.

41. As United asserted in its previous case against Plaintiffs, confirmation testing labs, like Lab Plaintiffs, submit claims to private payors, like United, for benefits on UA tests performed on plan members' urine specimens and private payors make payments to the confirmation testing labs for these services, pursuant to payor obligations to the members under the terms of the

members' plans.

42. As United asserted in its previous case against Plaintiffs, UA tests are used by a wide variety of healthcare providers because of their vital importance as a tool for healthcare professionals.

43. Lab Plaintiffs receive confirmation test referrals from a variety of providers who view their services as highly professional and medically necessary.

44. Lab Plaintiffs often receive confirmation test referrals from pain management physicians and addiction treatment facilities.

45. As United asserted in its previous case against Plaintiffs, a normal part of a pain management provider's practice is to test their patients' urine to determine, among other things, whether patients are taking their medication or whether patients are taking other drugs that may interact with their prescribed drugs.

46. As United asserted in its previous case against Plaintiffs, in order for a UA confirmation test to be covered and eligible for payment from United's plans, an authorized medical provider must order the test and the test must be medically necessary.

47. Lab Plaintiffs only performed services and billed United for United-insured patients when a medical provider ordered the tests and the tests were determined to be medically necessary by the medical provider.

Background Facts Regarding Plaintiffs' Claims Under ERISA and State Law Claims.

48. Plaintiffs performed UA testing in San Antonio, Texas from many facilities throughout the U.S.

49. United is a global health service company that, among other things, insures and

administers various employee health and welfare benefit plans, including: (i) self-funded plans for which United provides administrative services, (ii) plans insured under group policies issued by United but maintained by private employers, (iii) plans covering federal employees, (iv) plans covering employees of state governmental entities, (v) church plans, (vi) policies issued to individuals, and (vii) Medicare.

50. Lab Plaintiffs routinely received an assignment of benefits ("AOB") from individual insureds to whom it provides services, placing it in the shoes of those individuals and entitling Lab Plaintiffs to all rights, title and benefits extending from the coverage policies of Defendants' insureds.

51. As a matter of standard practice, Lab Plaintiffs adhere to United's medical necessity guidelines for the services Lab Plaintiffs render for patients covered by United plans.

52. Upon information and belief, United allows insureds and their physicians the flexibility to obtain healthcare services from either in-network or out-of-network medical providers.

53. The majority of the claims at issue are covered under group employer-based health plans and are therefore subject to ERISA.

54. Starting in 2015, United made allegations of fraud against Plaintiffs and stopped processing all claims submitted by Plaintiffs. This culminated in the filing of United's previous case against Plaintiffs.

55. United has failed to properly pay Lab Plaintiffs for its claims for services Lab Plaintiffs rendered to United's insureds under the assignments of benefits that Lab Plaintiffs received and Lab Plaintiffs have not been paid for millions of dollars in claims from United.

56. Plaintiffs have exhausted all administrative remedies and extensively tried to settle its issues with United without success.

Background Facts on Plaintiffs' Request for Declaratory Judgment regarding any ERISA or non-ERISA Scheme to Defraud United.

57. Plaintiffs request declaratory judgment regarding the plans at issue in this case and United's allegations against Plaintiffs, as outlined by United in a since-dismissed lawsuit.

58. In its since-dismissed lawsuit, United alleged the fraud, negligent misrepresentation, unjust enrichment, violations of ERISA statutes, tortious interference with contract, and other claims against Plaintiffs.

IV. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF
(Breach of Contract-Lab Plaintiffs)

59. Lab Plaintiffs incorporate all preceding allegations as if fully set forth herein.

60. Defendants have breached their contract with their insureds, and Lab Plaintiffs as assignee of their insureds, by failing to pay Lab Plaintiffs those funds due and owing pursuant to the claims made under Defendants' insureds' policies.

61. Defendants' insureds and Lab Plaintiffs have performed under the contracts for insurance coverage.

62. Defendants have failed to comply with the language of their own policies by failing to provide a written explanation of the reasons for denial of its insured's claims made by Lab Plaintiffs.

63. Defendants have denied Lab Plaintiffs meaningful access to their administrative remedies.

64. As a direct and proximate result of Defendants' material breach of their own contracts to provide coverage for their insureds, Lab Plaintiffs have sustained damages in an amount to be proven at trial, but no less than: (1) the amount of all claims denied by Defendants without justification; (2) withheld claims payments; (3) Plaintiffs' attorney fees and costs incurred in commencing and prosecuting this lawsuit; (4) and all other remedies deemed just and appropriate under applicable law.

65. Lab Plaintiffs are therefore entitled to a judgment against Defendants.

SECOND CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Lab Plaintiffs)

66. Lab Plaintiffs incorporate all preceding allegations as if fully set forth herein.

67. An implied covenant of good faith and fair dealing inheres in Defendants' policies with its insureds that prevents Defendants from acting, or failing to act, in any way that deprives their insureds—or Lab Plaintiffs, as the insureds' designee—of the benefit of their bargain with Defendants.

68. Defendants have materially breached the implied covenant of good faith and fair dealing by, without limitation, failing to pay amounts due and owing pursuant to their own contracts for coverage of their insureds, and payments to providers of their insureds.

69. As a direct and proximate result of Defendants' material breaches of the implied covenants of good faith and fair dealing inhering in its own contracts, Lab Plaintiffs have sustained damages in an amount to be proven at trial, but no less than: (1) the amount of all claims denied by Defendants without justification; (2) withheld claims payments; (3) Lab Plaintiffs' attorney fees and costs incurred in commencing and prosecuting this lawsuit; (4) and all other remedies

deemed just and appropriate under applicable law.

70. Lab Plaintiffs are therefore entitled to a judgment.

THIRD CLAIM FOR RELIEF
(Unjust Enrichment/Quasi-Contract/Quantum Meruit)

71. Lab Plaintiffs incorporate all preceding allegations as if fully set forth herein.

72. In the event the Court concludes that Defendants' contracts with its insureds are not enforceable as to Lab Plaintiffs as a provider, Lab Plaintiffs asserts this alternative claim for unjust enrichment, quasi-contract, and/or quantum meruit.

73. Lab Plaintiffs conferred a valuable benefit upon Defendants' insureds by, without limitation, delivering services to Defendants' insureds, in as yet unpaid claims.

74. Defendants accept payment of insureds' premiums in exchange for provision of insurance coverage and payment of claims made by insureds, or as in this case, by their assignees.

75. Defendants knew of, and appreciated, the benefit they received from Lab Plaintiffs.

76. Lab Plaintiffs did not confer this benefit officiously.

77. Under the circumstances alleged herein, it would be unjust for Defendants to retain the benefit it received from Lab Plaintiffs without compensating Lab Plaintiffs, as assignee of Defendants' beneficiaries, in an equivalent amount.

78. Defendants have not compensated Lab Plaintiffs in an amount equivalent to the benefit Plaintiffs conferred upon Defendants.

79. Defendants have therefore unjustly enriched themselves at Lab Plaintiffs' expense.

80. Lab Plaintiffs are therefore entitled to a judgment.

FOURTH CLAIM FOR RELIEF
(Claim for Benefits under ERISA, 28 U.S.C. § 1132)

81. Lab Plaintiffs incorporate all preceding allegations as if fully set forth herein.

82. This is an action filed pursuant to ERISA § 502(a)(1)(B), 28 U.S.C. §1132 to recover benefits due to the assignee of the participants or beneficiaries of an ERISA plan.

83. Lab Plaintiffs provided UA services to the insureds.

84. Under the plans administered and/or funded by Defendants, Defendants are obligated to pay for medically necessary services, covered services, or covered benefits as defined by the terms of Defendants' insureds' plans.

85. Defendants have inaccurately and wrongfully classified Lab Plaintiffs' claims as not medically necessary, and have proceeded to unlawfully withhold payment for services. To the extent the Defendants' insureds' plans are issued pursuant to an employee benefit plan, Defendants' failure to pay for the medically necessary services provided by Lab Plaintiffs to its insureds, violates ERISA. As such, the insureds, and Lab Plaintiffs by assignment, have suffered damages as a result of Defendants' violations.

86. The insureds have assigned to Lab Plaintiffs: all claims, including those arising under ERISA.

87. As assignee of the beneficiaries of the plans at issue, Lab Plaintiffs are entitled to recover benefits due to the beneficiaries and enforce the rights of the beneficiaries under the terms of the Defendants' insureds' plans.

FIFTH CLAIM FOR RELIEF
(Breach of Fiduciary Duties under ERISA)

88. Lab Plaintiffs hereby incorporate all preceding allegations as if each was fully stated

herein.

89. Lab Plaintiffs, as the assignees of ERISA subscribers/members, is entitled to assert a claim for relief under United's breach of the fiduciary duties of loyalty and care under 29 U.S.C. § 1132(a)(3).

90. United acted as "fiduciary" to Lab Plaintiffs as an assignees in connection with the beneficiaries' group health plans, as such term is understood under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). In its capacity as the insurer, plan administrator, claims administrator and/or fiduciary of ERISA group plans, United is a fiduciary.

91. United breached its duties to Lab Plaintiffs as assignees by underpaying claims without valid data or evidence to substantiate the amount paid, and/or doing so in an arbitrary fashion, by omitting material information about its determinations from Lab Plaintiffs and/or by making misrepresentations about its claims determinations. Specifically, United acted as fiduciary to Lab Plaintiffs as assignee because United exercised discretion in determining whether plan benefits would be paid, and/or the amounts of plan benefits that would be paid, to those plan beneficiaries. The exercise of discretion in such determinations of plan benefits is an inherently fiduciary function that must be carried out in accordance with the terms of the plan, not in a manner to maximize profit to United by paying lesser amounts to Lab Plaintiffs.

92. By engaging in the conduct described above, United failed to act with the care, skill, prudence and diligence that a prudent plan administrator would use in the conduct of an enterprise of like character or to act in accordance with the documents and instruments governing the plan. Fiduciaries must ensure that they are acting in accordance with the documents and instruments governing the plan. ERISA §§ 404(a)(1)(B) and (D), 29 U.S.C. §§ 1104(a)(1)(B) and (D). United violated its fiduciary duty of care by, among other things, determining whether plan

benefits would be paid, and/or determining the amounts of plan benefits that would be paid, to those plan beneficiaries based on maximizing profit to United, rather than based on the terms of the plans and applicable statutes and regulations.

93. As a fiduciary of group health plans under ERISA, United owes beneficiaries a duty of loyalty, defined as an obligation to make decisions in the interest of beneficiaries, and to avoid self-dealing or financial arrangements that benefit the fiduciary at the expense of beneficiaries. United cannot, for example, make benefit determinations for the purpose of maximizing profit to United at the expense of beneficiaries.

94. United violated its fiduciary duty of loyalty by, among other things, determining whether plan benefits would be paid, and/or determining the amounts of plan benefits that would be paid, to those plan beneficiaries based on maximizing profit to United, rather than based on the terms of the plans and applicable statutes and regulations.

95. Lab Plaintiffs as assignees are entitled to relief for United's violation of its fiduciary duties under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), including restitution, injunctive and declaratory relief, and its removal as a breaching fiduciary.

96. As a direct and proximate cause of United's ERISA breaches, Lab Plaintiffs have been and continues to be damaged in an amount in excess of the jurisdictional limits of the Court.

SIXTH CLAIM FOR RELIEF
(United's Failure to Provide Full and Fair Review Under ERISA)

97. Plaintiffs hereby incorporate all preceding allegations as if each was fully stated herein.

98. United functions as the "plan administrator" within the meaning of such terms under ERISA when it insures a group health plan, or when it is designated as a plan administrator for such plan. As such, Lab Plaintiffs as assignees are entitled to assert a claim for relief under 29 U.S.C.

§ 1132(a)(3).

99. Although United was obligated to provide a "full and fair review" of all claims, it failed to do so in connection with claims paid to Lab Plaintiffs, and otherwise failed to make necessary disclosures pursuant to 29 U.S.C. § 1133 (and its regulations).

100. Lab Plaintiffs were proximately harmed by United's failure to comply with 29 U.S.C. § 1133 and have been damaged in an amount in excess of the jurisdictional limits of the Court.

SEVENTH CLAIM FOR RELIEF

(United's Violations of Claims Procedure Under ERISA)

101. Plaintiffs hereby incorporate all preceding allegations as if each was fully stated herein.

102. United is an insurance company that is subject to regulation under the insurance laws of more than one state, including the State of Texas. Further, United processes benefit claims for self- funded plans providing claims filing and notices of decisions to policyholders in such plans.

103. United is an insurance company and must comply with claims procedures defined by law (e.g., 29 CFR § 2560.503-1) for subscribers and members. Lab Plaintiffs as assignees are therefore entitled to seek additional relief if an insurance company failed to comply with federal law. 29 U.S.C. § 1132(a)(3).

104. United violated these claims procedure regulations by engaging in conduct that rendered its claims procedures and appeals process unfair to subscribers and their assignee.

105. As a proximate result of its violation of such regulations, Lab Plaintiffs have been harmed in an amount in excess of the jurisdictional limits of this Court.

EIGHTH CLAIM FOR RELIEF
(Texas Insurance Code)

106. Plaintiffs hereby incorporate all preceding allegations as if each was fully stated herein.

107. The acts and omissions above also constitute violations of Texas common law and the Texas Insurance Code. By arbitrarily delaying and failing to timely pay claims, United is in violation of the Texas Prompt Pay Statute, Tex. Ins. Code § 542.058, among other sections. Further, the acts and omission constitute an illegal boycott or an act of coercion in violation of Tex. Ins. Code § 541.003, as an act of unfair competition within the state of Texas. See also, Tex. Ins. Code § 541.054. As a proximate result of its violations of such regulations and laws, Plaintiffs have been harmed in an amount in excess of the jurisdictional limits of this Court.

NINTH CLAIM FOR RELIEF
(Declaratory Judgment regarding Plaintiffs' Claims for Affirmative Relief)

108. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

109. A ripe, justiciable controversy exists between Plaintiffs and Defendants regarding Defendants' refusal to pay claims submitted by Plaintiffs.

110. Pursuant to 28 U.S.C. § 2201 et seq., Plaintiffs are entitled to an order and judgment declaring the following:

a. Defendants have failed to comply with their own contracts with their insureds, and their providers, in its failure to seasonably notify Plaintiffs of the bases on which Defendants are denying claims;

b. Plaintiffs are entitled to be compensated for services provided to Defendants' insureds, via payment by Defendants of outstanding claims.

c. Defendants have failed to provide meaningful access to administrative remedies to Plaintiffs, and as such, are barred from denying those claims submitted to Defendants by

Plaintiffs.

d. Defendants' practice of denying claims wherein Plaintiffs have submitted requested medical records, but Defendants refuse to acknowledge receipt is an unlawful and abusive practice designed to thwart Plaintiffs' attempts to comply with Defendants' claims and appeals processes.

e. Plaintiffs maintain all rights and remedies afforded to it under Texas law, and nothing in a declaratory order and judgment in this case shall affect those rights.

TENTH CLAIM FOR RELIEF
(Declaratory Judgment Regarding Defendants' Allegations Against Plaintiffs)

111. Plaintiffs hereby incorporate all preceding allegations as if each was fully stated herein.

112. United has made a number of allegations regarding Plaintiffs' conduct regarding insureds who are under ERISA plans administered by United.

113. Plaintiffs make the following requests for declaratory judgment under Texas law regarding United's allegations against Plaintiffs.

114. Plaintiffs ask that the Court enters a declaratory judgment that Plaintiffs did not commit fraud in its dealings with United or its insureds, made no material misrepresentations to United, or withheld any material facts from United.

115. Plaintiffs submitted claims to United for services that were medically necessary and authorized pursuant to the terms of the patients' United plans for whom Lab Plaintiffs rendered medical services.

116. Plaintiffs ask that the Court enters a declaratory judgment that Plaintiffs did not commit negligent misrepresentation in its dealings with United.

117. Plaintiffs ask that the Court enters a declaratory judgment that Plaintiffs' conduct in dealing with United did not constitute tortious interference with contract.

118. Each of the members for whom Plaintiffs submitted claims and received payment from United received health care benefits pursuant to a benefit plan insured and/or administered by United.

119. Plaintiffs did not cause in-network providers to breach the terms of their contracts with United.

120. Plaintiffs ask that the Court enters a declaratory judgment that Plaintiffs have not been unjustly enriched as a result of their billing practices related to its dealings with United.

121. Plaintiffs were entitled to seek, collect, or retain the payments they received from United.

122. Plaintiffs ask that the Court enters a declaratory judgment that the money Lab Plaintiffs received from United belongs in equity and good conscience to Lab Plaintiffs.

123. Plaintiffs ask that the Court enters a declaratory judgment that Lab Plaintiffs were entitled to seek, collect, or retain the payments they received from United under ERISA.

124. Plaintiffs ask that the Court enters a declaratory judgment that pursuant to Texas law and Section 502(a)(3) of ERISA that the claims for reimbursement submitted by Lab Plaintiffs are for covered services, per the plans' summary plan descriptions, and are thus payable under the employee health and welfare benefit plans that are insured and/or administered by United.

125. Under Texas law, Plaintiffs are entitled to reasonable and necessary attorneys' fees and costs.

V. DISCOVERY RULE

126. Plaintiffs incorporate each preceding paragraph as if each was fully stated herein.

127. Plaintiffs did not know and could not have known, despite the exercise of reasonable

diligence, of all the facts underlying its claims prior to this lawsuit. The causes of action asserted by Plaintiffs against Defendants herein are timely filed as the discovery rule deferred accrual of the respective statutes of limitations for such causes of action. Plaintiffs' damages resulting from Defendants' misconduct alleged herein were inherently undiscoverable and objectively verifiable.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that Defendants be cited to appear and answer and that the Court enter Judgment against Defendants for the following:

a. An award of both actual and consequential damages;

b. Statutory damages;

c. An award of punitive and exemplary damages;

d. Equitable relief as requested herein;

e. Declaratory and injunctive relief as requested herein;

f. Reasonable and necessary attorneys' fees;

g. Costs of court;

h. Expert witness fees;

i. Prejudgment and post-judgment interest; and

j. Such other and further relief at law or in equity to which Plaintiffs may be justly entitled.

JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE.

Respectfully submitted,

HORNBERGER FULLER & GARZA INCORPORATED
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By: ______________________
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ATTORNEYS FOR PLAINTIFFS